STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case No. 16-C-10399-LMA
	)	
	)	
WARREN WENDELL QUANN,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
	)	ENROLLMENT
A Member of the State Bar, No. 140032.	)	

Introduction[1]

This matter is before the court on an order of reference filed by the Review Department of the State Bar Court on August 25, 2016, for a hearing and decision as to whether the facts and circumstances surrounding the misdemeanor violation of reckless driving involving alcohol or drugs or both of which Respondent Warren Wendell Quann (Respondent) was convicted in March 2013 involved moral turpitude (§§ 6101, 6102) or other misconduct warranting discipline (*In re Kelley* (1990) 52 Cal.3d 487, 494) and, if so found, for a recommendation as to the discipline to be imposed. (Cal. Rules of Court, rule 9.10(a); Rules Proc. of State Bar, rule 5.340, et seq.)

As set forth below, the court finds that the facts and circumstances surrounding Respondent's misdemeanor violation involved both moral turpitude and other misconduct warranting discipline. Moreover, in light of the moral turpitude and other misconduct in the

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code unless otherwise indicated.

facts and circumstances surrounding Respondent's conviction and the serious aggravation, including lack of candor and three prior records of discipline, one of which involved multiple acts of dishonesty, but only limited mitigation, the court will recommend that Respondent be disbarred.

Significant Procedural History

In October 2012, a misdemeanor complaint was filed against Respondent in case number 12T05085 in the Sacramento County Superior Court. In that complaint, Respondent was charged with one count of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol or drugs or both) and one count of violating Vehicle Code section 23152, subdivision (b) (driving with a blood-alcohol percentage of 0.08 or more). Each of those counts alleged that Respondent had a prior conviction for reckless driving involving alcohol or drugs or both.[2] Later, the two charged DUI violations were reduced to one charged misdemeanor violation of reckless driving involving alcohol or drugs or both under Vehicle Code section 23103 pursuant to Vehicle Code section 23103.5, subdivision (a)."[3]

On March 22, 2013, Respondent pleaded nolo contendere to the reduced charge of violating Vehicle Code section 23103. That same day, the superior court accepted Respondent's nolo contendere plea, suspended the imposition of judgment and sentence on the nolo contendere

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[2] As Respondent admits, the allegation of a prior conviction is true. Respondent was previously convicted of reckless driving involving alcohol or drugs or both on May 19, 2011, in Sacramento County Superior Court case number 11T00981 (Respondent's 2011 conviction). Moreover, Respondent was placed on three years' informal criminal probation in superior court case number 11T00981. That criminal probation began on May 19, 2011, and ended on May 19, 2014.

[3] It is notable, that the charges were not reduced to a single charged violation of Vehicle Code section 23103 pursuant to Vehicle Code section 23103.5 because of some problem with the "Accuracy of [the] chemical test [for alcohol]" or because the state "May be unable to sustain [its] burden of proof" or because there was "Questionable probable cause [to stop and arrest Respondent]." Instead, the charges were reduced because of a "Negotiated disposition involving a guilty plea to [a] related or other offense."

plea, and placed Respondent on three years' informal probation. Thus, for purposes of attorney discipline, Respondent was convicted of a misdemeanor violation of Vehicle Code section 23103 on March 22, 2013 (Respondent's 2013 conviction).[4] (§ 6101, subd. (e) ["acceptance of a nolo contendere plea... is deemed to be a conviction..."].) Moreover, Respondent's 2013 conviction became final for attorney discipline purposes when the superior court suspended the imposition of sentence and placed Respondent on informal probation on March 22, 2013. (§ 6102, subd. (e).)

On July 22, 2016, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) transmitted, to the review department, a certified copy of the Respondent's 2013 conviction. Thereafter, the review department filed its August 25, 2016, order referring Respondent's 2013 conviction to the hearing department for a hearing and decision recommending the discipline to be imposed in the event that it finds that the facts and circumstances surrounding Respondent's 2013 conviction involved moral turpitude or other misconduct warranting discipline.

On August 29, 2016, this court filed and served on Respondent a notice of hearing on his 2013 conviction. (Rules Proc. of State Bar, rule 5.345(A).) On September 28, 2016, Respondent filed his response to the notice of hearing on conviction.

In November 2016, Respondent sought referral to the State Bar Court's Alternative Discipline Program (ADP). However, after a two-month evaluation period, State Bar Court Hearing Judge Pat McElroy found, in an order she filed on January 23, 2017, that Respondent was not eligible to participate in ADP because he would not stipulate to the underlying facts and

[4] Both the superior court in its files in both case numbers 12T05085 and 11T00981 and the review department in its August 25, 2016, referral order in the present proceeding, refer to Respondent's convictions for reckless driving in violation Vehicle Code section 23102 as convictions for violating Vehicle Code section 23103.5. For consistency, this court will also do so from this point forward.

conclusions of law, which is a requirement for participation. (See Rules Proc. of State Bar, rule 5.382(A)(2) [participation in ADP is contingent on "the Court's approval of a stipulation of facts and conclusions of law signed by the parties"].) Respondent did not seek review of Judge McElroy's January 23, 2017, order (Rules Proc. of State Bar, rule 5.389(A)(1)) and the time in which he could have done so has long passed (Rules Proc. of State Bar, rules 5.389(B), 5.150(B)).

On February 24, 2017, the parties filed a partial stipulation as to facts and admission of documents.[5] On March 8 and 9, 2017, the present matter proceeded to trial. The State Bar was represented by Senior Trial Counsel Susan Kagan and Deputy Trial Counsel Johnna G. Sack. Respondent represented himself.

After hearing closing arguments on March 9, 2017, the court left the record open until March 17, 2017, to provide Respondent with another opportunity to submit evidence supporting his claim that he has been continuously participating in the State Bar of California's Lawyers Assistance Program (LAP) since December 2016. On March 17, 2017, Respondent submitted, to the court, copies of (1) an unsigned letter dated February 28, 2017, that Respondent purportedly received from the LAP Director notifying Respondent that he was formally accepted into LAP on February 22, 2017, and (2) a LAP participation plan, which Respondent signed on March 18, 2017; the LAP case manager signed on March 14, 2017; and the LAP director signed on March 15, 2017. Nothing in those two documents suggest, much less establish, that Respondent participated in LAP before February 22, 2017. Finally, on March 17, 2017, the court took the present proceeding under submission for decision.

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[5] In their partial stipulation of facts and admission of documents, the parties erroneously stipulate that, in both superior court case numbers 12T05085 and 11T00981, that Respondent pleaded guilty to reckless driving. The court rejects those two erroneous stipulations.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 6, 1989, and has been a member of the State Bar of California since that time.[6]

Facts

Respondent is conclusively presumed, by the record of his 2013 conviction, to have committed all the acts necessary to constitute the crime of which he was convicted (i.e., violating Vehicle Code section 23103.5). (§ 6101, subd. (a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097; *In re Duggan* (1976) 17 Cal.3d 416, 423; *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.) However, because Respondent's crime does not inherently involve moral turpitude, "[w]hether those acts amount to professional misconduct . . . is a conclusion that can only be reached by an examination of the facts and circumstances surrounding the conviction. [Citations.]" (*In the Matter of Respondent O, supra*, 2 Cal. State Bar Ct. Rptr. at p. 589, fn. 6.)

As the review department noted in *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935, that, in a conviction referral proceeding, such as the present proceeding, the State Bar Court:

> "is not restricted to examining the elements of the crime, but rather may look to the whole course of [the respondent's] conduct which reflects upon his fitness to practice law. [Citations.]" [Citation.] That is because it is the misconduct underlying [the] respondent's conviction, as opposed to the conviction itself, that warrants discipline. [Citation.]

Respondent's 2013 Conviction

On June 1, 2012, at approximately 11:57 p.m., Respondent drove his Mercedes Benz in Elk Grove, California while he knew he was intoxicated and that it would violate his criminal

[6] In their partial stipulation as to facts and admission of documents, the parties erroneously stipulate that Respondent was admitted to practice on November 25, 2003. The court rejects that erroneous stipulation.

probation in his 2011 conviction. Detective Jacobo of the Elk Grove Police Department stopped Respondent after he saw Respondent's Mercedes traveling down the street straddling two lanes of traffic and then weaving within its own lane. When Detective Jacobo stopped Respondent, Detective Jacobo suspected Respondent had been drinking because Respondent's speech was slurred, Respondent's eyes were bloodshot, and Respondent smelled of alcohol. Detective Jacobo was correct because as noted below, sometime after Respondent was arrested and taken into custody during the early morning hours on June 2, 2012, his blood-alcohol content was .10 percent, which is over the legal limit of .08 percent.

When Detective Jacobo politely questioned Respondent, Respondent repeatedly lied to the detective. The following are some of the instances in which Respondent lied to Detective Jacobo about his drinking alcohol on June 1, 2012.

Officer: Okay, I smell a little bit of alcohol in here [i.e., in Respondent's car] are you sure you have haven't had anything to drink"
Quann: No.
Officer: Positive because it smells like a little bit of alcohol coming from here?
Quann: No I'm saying, I have not.
Officer: Okay, so why am I smelling a little bit of alcohol in here?
Quann: I don't know why
Officer: Oh Alright. Sure you haven't had anything to drink at all tonight. Any mixed drinks something like that? Any mixed drinks anything like that. Nothing to drink at a friend's house anything like that?
Quann: No

Except when he agreed to try to follow Detective Jacobo's finger back and forth without moving his head, Respondent unequivocally refused Detective Jacobo's requests that Respondent submit to further standard field sobriety tests. After Respondent refused to perform any further field sobriety tests, the following discourse took place:

Officer: ... Most people that tell me that they don't want to perform these tests are usually concerned that somehow there is going to be an indication that there has been drinking on board.
Quann: No that's not the case.
Officer: Okay, alright.
Quann: What I'm telling you is I'm a lawyer and I work with lawyers

When Detective Jacobo asked Respondent whether he had "Any probations or paroles sir?"; Respondent clearly lied by answering "Probation or parole, no." When Respondent drove while intoxicated on the night of June 1, 2012, Respondent knew that he was on three years' informal probation from May 19, 2011, to May 19, 2014, as a result of his pleading nolo contendere to violating Vehicle Code section 23103.5 in superior court case number 11T00981. The court rejects for want of credibility Respondent's testimony in this proceeding that he did not know or believe that he had been convicted of a crime following his arrest for driving while intoxicated on January 25, 2011, and that he did not know that he was on three years' informal criminal probation following Respondent's 2011 conviction on May 19, 2011. The court's adverse credibility determination is supported by the fact that Respondent's testimony is wholly implausible. Respondent's testimony is also rebutted by both the plea in absentia and the waiver and plea to reckless driving (alcohol related) that Respondent signed on May 18, 2011, and filed in superior court case number 11T00981.

The court also rejects for want of credibility Respondent's testimony that he signed both of the two foregoing documents without ever reading them. This adverse credibility determination is also supported by its own implausibility. The court's determination is further supported by attorney's certification in the plea in absentia, which Respondent's attorney in superior court case number 11T00981, Attorney Justin Ward, signed on May 18, 2011.

In short, Respondent was fully aware on June 1, 2012, that the express conditions of his three-year informal probation in superior court case number 11T00981 required that he obey all laws, that he not drive a motor vehicle with any measurable amount of alcohol in his blood, and that he not refuse to complete a blood alcohol chemical test when offered by any peace officer with reasonable cause to do so. As set forth above, Respondent deliberately violated each of the

conditions when he chose to drive while intoxicated one June 1, 2012; chose to lie to Detective Jacobo; and refused Detective Jacobo's request to take a field Breathalyzer.

Conclusions

Moral Turpitude

An attorney's conviction of driving under the influence of alcohol, even with prior convictions of that offense, does not per se establish moral turpitude. (*In re Kelley* (1990) 52 Cal.3d 487, 494.) However, the fact that Respondent's 2013 conviction was in violation of the criminal probation in Respondent's 2011 conviction establishes a strong nexus between Respondent's 2013 conviction and the practice of law. (*In re Kelley, supra* , 52 Cal.3d at p. 495.) The Supreme Court has made clear that "[d]isobedience of a court order whether as a legal representative or as a party, demonstrates a lapse of character and a disrespect for the legal system that directly relate to an attorney's fitness to practice law and serve as an officer of the court. [Citation.]" (*Ibid.*)

"Criminal conduct not committed in the practice of law or against a client reveals moral turpitude if it [and the surrounding facts and circumstances show] a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession." (*In re Lesansky* (2001) 25 Cal.4th 11, 16.) The court finds that this test is met here by Respondent's decision to deliberately violate both the laws criminalizing drunk driving and the conditions of the criminal probation that was imposed on him because of his 2011 conviction and drive his Mercedes on the night of June 1, 2012, when he knew he was intoxicated (*In re Kelley, supra* , 52 Cal.3d at p. 495) and by Respondent's repeated lying to Detective Jacobo after

the Detective stopped him for driving drunk and was questioning Respondent on the night of June 1, 2012 (Cutler v. State Bar (1969) 71 Cal.2d 241, 253 ["An attorney's practice of deceit involves moral turpitude."]; *Segretti v. State Bar* (1976) 15 Cal.3d 878, 888 ["A member of the bar should not under any circumstances attempt to deceive another."].)

Other Misconduct Warranting Discipline

The facts and circumstances surrounding Respondent's 2013 conviction also involved other misconduct warranting discipline because, as set forth below, they include Respondent engaging in the unauthorized practice of law in willful violation of section 6126, subdivision (b), which makes it a crime for an attorney who is suspended from the practice of law to hold himself or herself out as entitled to practice law, and of section 6068, subdivision (a), which requires that attorneys obey the law.

Respondent has been continually suspended from the practice of law under a Supreme Court's disciplinary order in Respondent's prior record of discipline. Thus, when Respondent told Detective Jacobo: "I'm a lawyer," on the night of June 1, 2012, Respondent engaged in the unauthorized practice of law by holding himself out to Detective Jacobo as on entitled to practice law while he was suspended from practice.

Aggravation

Prior Records of Discipline (Std. 1.5(a).)

Respondent has the following three prior records of discipline.

***Quann* I**

On July 8, 2011, the Supreme Court filed an order in *In re Warren Wendell Quann on Discipline*, case number S192656 (State Bar Court case number 10-C-00922) (*Quann* I) placing Respondent on one year's stayed suspension and two years' probation on conditions, including Respondent's suspension from practice for the first seven months of his probation. Respondent's

two-year disciplinary probation in *Quann* I began on August 7, 2011, and ended on August 7, 2013.

The Supreme Court imposed the foregoing discipline on Respondent based on this court's March 4, 2011, decision in case number 10-C-00922, finding that the facts and circumstances surrounding Respondent's August 18, 1998, misdemeanor conviction for violating title 26 United States Code section 7207 (submitting fraudulent documents to the IRS) (Respondent's 1998 conviction) involved moral turpitude.

Respondent's 1998 conviction was based on Respondent's guilty plea to a misdemeanor violation of title 26 United States Code section 7207 that Respondent made in accordance with a plea agreement that Respondent made with the United States Attorney for the Eastern District of California. The United States District Court placed Respondent on 24 months' probation on conditions, including performing 160 hours of community service; paying the IRS all taxes, interest, and penalties; filing an amended non-fraudulent 1992 tax return within one week after sentencing; and immediately paying a $2,500 fine.

In its March 4, 2011, decision, this court found that the following facts surrounding Respondent's conviction involved moral turpitude. In April 1995, Respondent submitted to an IRS auditor, who was auditing Respondent's 1992 federal tax return, a receipt that Respondent knew falsely purported to document a $1,300 charitable deduction that Respondent falsely claimed he made on his 1992 return. In June 1996, Respondent submitted to the IRS an invoice that Respondent knew falsely purported to show that he paid $8,169 for a desk that he falsely claimed as a business expense on his 1992 tax return. Respondent submitted a credit card statement that Respondent knew had been altered to falsely reflect that he paid $1,085 for a desk chair that he also falsely claimed as a business expense on his 1992 tax return.

In *Quann* I, Respondent was given slight mitigation for his lack of a prior record of discipline because he had practiced law for only about six years before he began submitting fraudulent documents to the IRS in April 1995. Of course, Respondent's conduct involving moral turpitude began even before then; it began when Respondent filed his 1992 tax return in which he deliberately claimed false charitable deductions and business expense. Respondent was also given mitigation for lack of client harm, for cooperating with the State Bar by stipulating to facts and admission of documents; for providing pro bono and community services; and for his 14 years of post-misconduct practice without any additional charges of misconduct. The court did not find any aggravating circumstances in *Quann* I.

***Quann* II**

On June 20, 2012, the Supreme Court filed an order in *In re Warren Wendell Quann on Discipline*, case number S200633 (State Bar Court case number 09-O-11763, etc.) (*Quann* II) placing Respondent on three years' stayed suspension and three years' probation on conditions, including Respondent's suspension from practice for a minimum of the first two years of probation and continuing until Respondent establishes his rehabilitation, fitness to practice, and learning in the general law in accordance with former standard 1.4(c)(ii) (now standard 1.2(c)(1)). Respondent's three-year disciplinary probation in *Quann* II began on July 20, 2012, and ended on July 20, 2015.

The Supreme Court imposed the foregoing discipline on Respondent in accordance with a stipulation regarding facts, conclusions of law, and disposition that Respondent entered into with the State Bar and which the State Bar Court approved in an order filed on January 11, 2012, in case number 09-O-11763, etc. In that stipulation, Respondent stipulated to being paid more than $72,000 over the four-month period from December 2008 through March 2009 for preforming services for Second Chance Negotiations, Inc., a business providing mortgage loan modification

and restructuring services constituting the practice of law, and its clients. Respondent further stipulated to aiding Second Chance Negotiations, Inc. engage in the unauthorized practice of law in nine separate client matters (Rules Prof. Conduct, rule 1-300(A)) and failing to refund unearned fees totaling more than $21,000 in seven of those nine client matters (Rules Prof. Conduct, rule 3-700(D)(2)). In addition, Respondent stipulated that his misconduct in *Quann* II was aggravated by his then one prior record of discipline, significant client harm, and multiple acts of misconduct. In mitigation, Respondent cooperated with the State Bar.

***Quann* III**

On August 4, 2016, the Supreme Court filed an order in *In re Warren Wendell Quann on Discipline*, case number S235178 (State Bar Court case number 15-O-13585) (*Quann* III) placing Respondent on three years' stayed suspension and three years' probation on conditions, including Respondent's suspension from practice for a minimum of the first three years of probation and continuing until Respondent establishes his rehabilitation, fitness to practice, and learning in the general law in accordance with standard 1.2(c)(1). Respondent's three-year disciplinary probation in *Quann* III began on September 3, 2016, and will end on September 3, 2019.

The Supreme Court imposed the foregoing discipline on Respondent based on the State Bar Court's April 7, 2016, decision in case number 15-O-13585 finding that Respondent was culpable of repeatedly violating his duty under, section 6068, subdivision (k), to comply with the conditions of his three-year disciplinary probation in *Quann* II. Specifically, Respondent was found culpable of the following 10 violations of his disciplinary probation in *Quann* II: Respondent filed seven of his quarterly-probation reports late, Respondent field his final probation report, which was due by July 20, 2015, late; Respondent provided the required proof

of his restitution payments late; and Respondent paid the required reimbursements to the Client Security Fund late.

In aggravation, Respondent then had two prior records of discipline and committed multiple acts of misconduct (i.e., 10 violations of his disciplinary probation). In *Quann* III, Respondent was found culpable of an uncharged violation of section 6068, subdivision (k), which was considered as aggravation. (See, e.g., *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36 [uncharged misconduct may not be used as an independent ground of discipline, but may be considered, in appropriate circumstances, for other purposes such as aggravation].) At the trial in *Quann* III, Respondent testified that, even though he reported his 2011 and 2013 convictions to the State Bar (see § 6068, subd. (o)(5)), he did not report the convictions to State Bar's Office of Probation in his probation reports. In *Quann* III, the State Bar Court found without explanation that Respondent's 2011 "misdemeanor conviction is a violation of his probation conditions. He knew or should have known that he had a duty to report the DUI offense to the Office of Probation. This uncharged violation of section 6068, subdivision (k) is an aggravating factor."

The **State Bar Court decision in *Quann* III does not address Respondent's failure to report his 2013 conviction to the Office of Probation. Neither party sought reconsideration or review of the decision in** *Quann* III on the grounds that it did not expressly address whether Respondent had a duty to report his 2013 conviction to the Office of Probation. [7]

In *Quann* III, the State Bar Court found that the testimony of ten of Respondent's good character witnesses represented "an extraordinary demonstration of Respondent's good character attested to by a wide range of references in the general communities and who are aware of the

[7] The issue of whether Respondent had a duty to report his 2013 conviction to the Office of Probation was litigated, albeit inartfully, *Quann* III and adjudicated against the State Bar, albeit implicitly, in *Quann* III. The State Bar is barred by res judicata from seeking to relitigate that issue or any variation of it in this or any other disciplinary proceeding.

full extent of the member's misconduct," for which Respondent is entitled to very significant mitigation. In addition, even though Respondent was previously given mitigation, in *Quann* I, for his extensive community service and pro bono activities, Respondent was given mitigation in *Quann* III for the community service and the pro bono activities Respondent performed after *Quann* I (i.e., after 2011).

Lack of Candor (Std. 1.5(l).)

The court finds that Respondent's testimony in the present proceeding in which Respondent claimed to have told Detective Jacobo, on the night of June 1, 2012, before Detective Jacobo turned on his audio recording device, that he had been drinking alcohol at friend's house lacks candor. The quotes from the transcript of Detective Jacobo' s questioning of Respondent before he arrested Respondent are clear evidence that Respondent's testimony on this issues is deliberately false. Not only did Respondent repeatedly deny having anything to drink, but when Detective Jacobo specifically asked Respondent: "Nothing to drink at a friend's house anything like that?"; Respondent answered "No."

Respondent false testimony in this court is extremely serious aggravation. The Supreme Court has repeatedly held that false testimony or misrepresentations in a State Bar Court proceeding may constitute a greater offense than that of misappropriation, which itself ordinarily warrants disbarment. (*Middleton v. State Bar* (1990) 51 Cal.3d 548, 560.)

Mitigation

Cooperation With the State Bar (Std. 1.6(e).)

Respondent's cooperation with the State Bar by entering into the partial stipulation of facts and admission of documents with the State Bar warrants consideration in mitigation.

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Good Character (Std. 1.6(f).)

Respondent provided very credible good-character testimony from one witness: Anthony Ramsey Wallace. Wallace previously testified on Respondent's behalf in *Quann* III. In this proceeding, Wallace again testified as to Respondent's honesty and good character and was fully aware of Respondent's misconduct. Respondent's good character evidence warrants limited consideration in mitigation. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [testimony of three clients and three attorneys entitled to limited weight].)

Community Service

In his prior records of discipline, Respondent has been given significant mitigation for his high level of continuous community service. Wallace credibly testified that Respondent's continues to maintain the same high level of community service for which Respondent is also entitled to mitigation. Accordingly, Respondent's continuous community service after *Quann* III is a mitigating circumstance in this proceeding. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.)

Alcohol Recovery

The court applauds Respondent's current efforts at recovery from his admitted alcohol addiction and encourages him to earnestly continue those efforts. There is no evidence in the record as to whether those efforts are sufficient or whether they have been successful. In addition, they were only undertaken within about the past year. Respondent testified at the trial that he has been sober now for 10 months. Ten months of sobriety is insufficient to establish any significant rehabilitation. (See std. 1.6(d).)

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest

possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d. 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d. 1016, 1025; Std. 1.1.)

In determining the level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d. 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d. 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.7 provides that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors. In this case, the standards call for the imposition of a minimum sanction ranging from suspension to disbarment. Standard 2.15(c) provides "Disbarment or actual suspension is the presumed sanction for final conviction of a misdemeanor involving moral turpitude." Also applicable is standard 1.8(b), which provides:

> If a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:
>
> 1. Actual suspension was ordered in any one of the prior disciplinary matters;
> 2. The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or
> 3. The prior disciplinary matters coupled with the current record demonstrate the member's unwillingness or inability to conform to ethical responsibilities.

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51

Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar recommended that Respondent be disbarred from the practice of law. Respondent, on the other hand, argued for admission into ADP even though he has already been denied admittance to the program.

The Supreme Court and Review Department have not historically applied standard 1.8(b)[8] in a rigid fashion. As the standard provides, the critical issue is whether the most compelling mitigating circumstances clearly predominate to warrant an exception to the severe penalty of disbarment. (See *Barnum v. State Bar* (1990) 52 Cal.3d 104, 113 [disbarment under former std. 1.7(b) was imposed where no compelling mitigation]; compare *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781 [disbarment under former std. 1.7(b) not imposed where compelling mitigation included lack of harm and no bad faith].)

Here, Respondent's willingness and ability to be forthright and honest is a significant concern. Despite having been previously disciplined for making false statements under penalty of perjury and fabricating evidence in *Quann* I, Respondent has again been found culpable of making multiple misrepresentations. Integrity and honesty are essential qualities that all attorney must possess. Respondent has now twice-demonstrated a significant deficiency in this area. That said, even if this court had not found Respondent culpable of misrepresentation, it would be difficult to justify a level of discipline short of disbarment. The present matter marks Respondent's fourth discipline. All of Respondent's previous disciplines were extremely serious. *Quann* I involved Respondent's federal court conviction for submitting fraudulent documents to the IRS in an attempt to support fraudulent contributions and businesses expenses. *Quann* II involved Respondent's aiding the unauthorized practice of law by mortgage loan

[8] Standard 1.8(b) was previously identified as standard 1.7(b). Standard 1.8(b) is more limited than former standard 1.7(b), but is applicable here.

modification and Respondent's misconduct in nine separate client matters. *Quann* III involved Respondent's repeated failures to comply with the conditions of disciplinary probation in *Quann* II. Finally, the facts and circumstances surrounding Respondent's 2013 conviction and Respondent's false testimony in this proceeding reflect the same disregard for the fundamental rule of law– that of common honesty—that the facts and circumstances surrounding Respondent's conviction for submitting fraudulent documents to the IRS reflected almost 20 years ago.

While Respondent has demonstrated some mitigation, it does not rise to the level of "compelling." Further, Respondent's mitigation was effectively offset by the significant aggravation involved.

Therefore, having considered the nature and extent of the misconduct, the aggravating and mitigating circumstances, as well as the case law, the court finds that Respondent's disbarment is necessary to protect the public, the courts, and the legal community; to maintain high professional standards; and to preserve public confidence in the legal profession.

Recommendations

Discipline

It is recommended that respondent Warren Wendell Quann, State Bar Number 140032, be disbarred from the practice of law in California and Respondent's name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: May 22, 2017.

LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on May 23, 2017, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

WARREN W. QUANN
WARREN W QUANN
4416 42ND ST
SACRAMENTO, CA 95820 - 3926

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

JOHNNA G. SACK, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 23, 2017.

Bernadette Molina
Case Administrator
State Bar Court